IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

WP(C).No. 32625 of 2005(H)

PETITIONER:

C.A. PAPPACHAN,
CHEMMANNUR HOUSE, VAISSERY BAZAR,
KUNNAMKULAM. (DIED)

ADDITOINAL PETITIONER IMPLEADED:

VINOY C.PAPPACHAN, S/O. LATE PAPPACHAN,
CHEMMANNUR HOUSE, VAISSERY BAZAR,
KUNNAMANGALAM.

IS IMPLEADED AS ADDITIONAL PETITIONER AS PER ORDER DATED 9.7.2007 IN I.A. NO.9094 OF 2007.

BY ADV. SRI.K.RAMACHANDRAN
SRI.K.MOHAMMED FAISAL NAHA

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SECRETARY,
PUBLIC WORKS DEPARTMENT, THIRUVANANTHAPURAM.

3. THE EXECUTIVE ENGINEER,
KERALA STATE TRANSPORT PROJECT (PWD),
KUTTIPPURAM DIVISION, P.O. KUTTIPPURAM.

4. THE DISTRICT COLLECTOR, THRISSUR.

5. THE SPECIAL TAHSILDAR
(LAND ACQUISITION OFFICER), L.A.GENERAL, THRISSUR.

BY GOVERNMENT PLEADER SHRI BASANT BALAJI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/11/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C) NO. 32625 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE NOTICE DATED 3.1.2005 INFORMING THE PROPOSED ACQUISITION FROM THE 5TH RESPONDENT'S OFFICE.

EXHIBIT P2 TRUE COPY OF THE REPRESENTATION SENT BY THE PETITIONER DATED 10.6.2005 TO VARIOUS AUTHORITIES.

EXHIBIT P3 DO. DO. DATED 11.11.2005 SENT TO RESPONDENTS 4 AND 5.

EXHIBIT P4 DO. DO. DATED 17.11.2005 TO 4TH RESPONDENT'S

EXHIBIT P5 DO. DO. DTED 17.11.2005 T0 5TH RESPONDENT

RESPONDENTS' EXHIBITS: NIL

K. PADMANABHAN NAIR, J.

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W.P(C) NO. 32625 OF 2005

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Dated this the 23rd day of November, 2007

J U D G M E N T

Writ Petition was filed by the deceased first petitioner seeking a direction to the respondents not to demolish any portion of the building in excess of what was acquired. Pending proceedings he died and his son was impleaded as the additional petitioner. Petitioner's property along with a building was acquired. Respondents fixed the value of the entire building and attempted to demolish the same in its entirety. According the petitioner it is not necessary to demolish the entire structure and he is prepared to demolish the acquired portion of the building at his own expenses under the directions of respondents 3 to 5. Hence he prayed for a direction to the respondents not to demolish the entire structure.

2. Third respondent has filed a counter affidavit. It is stated that respondents are agreeable to the suggestion of the petitioner, provided four conditions are satisfied by the

petitioner. The four conditions are the following:

> "i. The owners have to demolish the building partly, at their own cost.
>
> ii. Since KSTP has given compensation for the full building, the parties have to refund the amount pertaining to the portion to be retained, together with upto date interest to KSTP and the demolition is to be carried out after refund of the amount as above.
>
> iii. It will be the responsibility of the owners to ensure the safety of the portion of building retained on account of part demolition and the District Collector or KSTP will not have any responsibility regarding safety of the building.
>
> iv. The Municipality will give necessary permission to retain portion of the building after part demolition subject to the prevailing Town Planning Rules, Kerala Municipal Act and Kerala Building Rules".

3. Learned counsel appearing for the petitioner has argued that the 4th condition is vague. It is argued that on account of the acquisition a portion of the existing building is demolished. It is pointed out that for reconstruction of the remaining portion of the building, the local authority is bound to give exemption from the provisions contained in the Town Planning Rules and Building Rules. It is open to the petitioner

to make necessary application before the competent authority seeking exemption and if any such application is received by the competent authority, the authority shall consider the same and pass appropriate orders in accordance with law. In view of the stand taken by the respondents, the Writ Petition can be disposed of in terms of the suggestions made.

In the result, Writ Petition is disposed of in the following manner: The owner will have to demolish the building partly at his own expenses and under the supervision of respondents 3 to 5. Since the petitioner had received the entire compensation, the value of any undemolished portion of the building with interest approved by the Reserve Bank of India is to be refunded to the KSTP. While demolishing, the petitioner shall ensure the safety of the undemolished portion and it is open to him to approach the competent authority for appropriate orders. Petitioner shall demolish the acquired portion of the building within two months from the date of receipt of a copy of this judgment, failing which it is open to the respondents to demolish that portion of the building and take steps to recover the excess amount, if the same was

received by the petitioner, by executing this judgment itself.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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W.P(C) NO. 32625 OF 2005

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J U D G M E N T

21ST NOVEMBER, 2007